

§ 240.6h-1 Settlement and regulatory halt requirements for security futures products.

(a) For the purposes of this section:

(1) *Opening price* means the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then *opening price* shall mean the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security.

(2) *Regular trading session* of a security means the normal hours for business of a national securities exchange or national securities association that lists the security.

(3) *Regulatory halt* means a delay, halt, or suspension in the trading of a security, that is instituted by the national securities exchange or national securities association that lists the security, as a result of:

(i) A determination that there are matters relating to the security or issuer that have not been adequately disclosed to the public, or that there are regulatory problems relating to the security which should be clarified before trading is permitted to continue; or

(ii) The operation of circuit breaker procedures to halt or suspend trading in all equity securities trading on that national securities exchange or national securities association.

(b) *Final settlement prices for security futures products.*

(1) The final settlement price of a cash-settled security futures product must fairly reflect the opening price of the underlying security or securities.

(2) Notwithstanding paragraph (b)(1) of this section, if an opening price for one or more securities underlying a security futures product is not readily available, the final settlement price of the security futures product shall fairly reflect:

(i) The price of the underlying security or securities during the most re-

cent regular trading session for such security or securities; or

(ii) The next available opening price of the underlying security or securities.

(3) Notwithstanding paragraph (b)(1) or (b)(2) of this section, if a clearing agency registered under Section 17A of the Act (15 U.S.C. 78q-1), or exempt from registration pursuant to Section 17A(b)(7) of the Act (15 U.S.C. 78q-1(b)(7)), to which the final settlement price of a security futures product is or would be reported determines, pursuant to its rules, that such final settlement price is not consistent with the protection of investors and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice, the clearing agency shall have the authority to determine, under its rules, a final settlement price for such security futures product.

(c) *Regulatory trading halts.* The rules of a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act (15 U.S.C. 78o-3(a)) that lists or trades one or more security futures products must include the following provisions:

(1) Trading of a security futures product based on a single security shall be halted at all times that a regulatory halt has been instituted for the underlying security; and

(2) Trading of a security futures product based on a narrow-based security index shall be halted at all times that a regulatory halt has been instituted for one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

(d) The Commission may exempt from the requirements of this section, either unconditionally or on specified terms and conditions, any national securities exchange or national securities association, if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors. An exemption granted pursuant to this paragraph shall not operate as an exemption from any

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Commodity Futures Trading Commission rules. Any exemption that may be required from such rules must be obtained separately from the Commodity Futures Trading Commission.

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§ 240.7c2-1 [Reserved]

HYPOTHECATION OF CUSTOMERS' SECURITIES

§ 240.8c-1 Hypothecation of customers' securities.

(a) *General provisions.* No member of a national securities exchange, and no broker or dealer who transacts a business in securities through the medium of any such member shall, directly or indirectly, hypothecate or arrange for or permit the continued hypothecation of any securities carried for the account of any customer under circumstances:

(1) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation;

(2) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such member, broker or dealer under a lien for a loan made to such member, broker or dealer; or

(3) That will permit securities carried for the account of customers to be hypothecated or subjected to any lien or liens or claim or claims of the pledges or pledgees, for a sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day, provided that funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgees for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subjected as promptly as practicable after such reduction occurs, but before

the lapse of one-half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such member, broker or dealer are payable and, in any event, before such member, broker or dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(b) *Definitions.* For the purposes of this section:

(1) The term *customer* shall not include any general or special partner or any director or officer of such member, broker or dealer, or any participant, as such, in any joint, group or syndicate account with such member, broker or dealer or with any partner, officer or director thereof. The term also shall not include any counterparty who has delivered collateral to an OTC derivatives dealer pursuant to a transaction in an eligible OTC derivative instrument, or pursuant to the OTC derivatives dealer's cash management securities activities or ancillary portfolio management securities activities, and who has received a prominent written notice from the OTC derivatives dealer that:

(i) Except as otherwise agreed in writing by the OTC derivatives dealer and the counterparty, the dealer may repledge or otherwise use the collateral in its business;

(ii) In the event of the OTC derivatives dealer's failure, the counterparty will likely be considered an unsecured creditor of the dealer as to that collateral;

(iii) The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa through 78lll) does not protect the counterparty; and

(iv) The collateral will not be subject to the requirements of § 240.8c-1, § 240.15c2-1, § 240.15c3-2, or § 240.15c3-3;

(2) The term *securities carried for the account of any customer* shall be deemed to mean:

(i) Securities received by or on behalf of such member, broker or dealer for the account of any customer;

(ii) Securities sold and appropriated by such member, broker or dealer to a customer, except that if such securities were subject to a lien when appropriated to a customer they shall not be